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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,676	11/20/2003	Donald G. Wheatley	1581-003	7380

26824 7590 11/22/2004

ALEX RHODES  
UNIT NO. 9  
50168 PONTIAC TRAIL  
WIXOM, MI 48393

EXAMINER


GUTMAN, HILARY L

ART UNIT PAPER NUMBER

3612

DATE MAILED: 11/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Office Action Summary</b></p>	<p>Application No.</p> <p align="center">10/716,676</p>	<p>Applicant(s)</p> <p align="center">WHEATLEY, DONALD G.</p>	
	<p>Examiner</p> <p align="center">Hilary Gutman</p>	<p>Art Unit</p> <p align="center">3612</p>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 October 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10, 12, 13 and 15-26 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 and 7-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6, 12, 13 and 15-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed 10/19/04 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the “dominant” upper portion of claims 6 and 22; the diameter of the tubular portion being substantially greater than an adjoining downward extending vertical portion of claim 23; the outer diameter of the dominant upper tubular portion being substantially greater than three to four times the thickness of the vertical downward extending planar wall portion of claim 24; the wall thickness about equal to the thickness of the vertical downward extending planar wall portion and the diameter substantially more than three to four times the thickness of the downward extending vertical wall portion of claim 25; and the outer diameter being ten to thirty times the thickness of the vertical downward extending planar wall portion of claim 26.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Specification***

2. The abstract of the disclosure is objected to because on line 2, “is provided” should be inserted after “truck”. Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

3. Claims 12, 15, 18, 20, and 22-23 are objected to because of the following informalities:

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In claim 12, line 2, “a” (second occurrence) should be “the”.

In claim 15, line 1, “of claim 14” is recited, but claim 14, the base claim from which this claim directly depends, has been canceled. Therefore, claim 15 is incomplete. Perhaps this claim should instead depend from claim 23. For the purposes of examination, this claim will be treated as though it depended from claim 23 instead of canceled claim 14.

In claim 18, line 2, “a cargo box” should apparently be “the cargo box”.

In claim 20, line 2, “said pick-up truck” should apparently be “a pick-up truck”.

In claim 22, line 7, “a side panel” should apparently be “the side panel” and “a pick-up truck” should apparently be “the pick-up truck”.

In claim 23, lines 8-9, “an inward extending horizontal flange portion” should apparently be “the inward extending horizontal flange portion” to refer back to the limitation of lines 6-7.

Appropriate correction is required.

4. Claims 12 and 17 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

In claim 12, the series of apertures are believed to be the same as the plurality of openings previously recited in claim 23, line 8.

In claim 17, the series of apertures are believed to be the same as the plurality of apertures previously recited in claim 23, line 10.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 6, 12-13, and 15-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 12, the difference between “a series of apertures” of line 2 and the “plurality of openings” of claim 23, line 8, is unclear. It is apparent that these two limitations refer to the same feature of the invention.

In claim 23, the difference between the “adjoining relatively short vertical downward extending planar wall portion” of lines 5-6 and the “adjoining downward extending vertical portion” of line 4 is unclear.

Claims 6 and 22-26 recite new limitations which contain new matter which was not described in the application as originally filed.

***Allowable Subject Matter***

7. Claims 6, 12-13, and 15-26 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

8. The following is a statement of reasons for the indication of allowable subject matter: the primary reason for the indication of allowable subject matter for the claims in this case is the inclusion of the specific dominant thin wall tubular shaped upper portion of claims 6 and 23; and

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the dominant long slender upper tubular portion of claim 22 in combination with the other elements recited, which is not found in the prior art of record.

### *Response to Arguments*

9. Applicant's arguments with respect to claims 6, 12-13, 15-20, and 22-26 have been considered but are moot in view of the new ground(s) of rejections.

### *Conclusion*

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a):

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**12. Any response to this final action should be mailed to:**

Box AF

Assistant Commissioner for Patents

Washington, D.C. 20231

**or faxed to:**

(703) 872-9327, (for formal communications; please mark "EXPEDITED  
PROCEDURE")

**or:**

(703) 746-3515, (for informal or draft communications, please clearly label

"PROPOSED" or "DRAFT").



Hilary Gutman

November 16, 2004